

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9244 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRABHATSINH SOMABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR SM MAZGAONKAR for Petitioners

MR DA BAMBHANIA for Respondents.

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 23/02/96

ORAL JUDGEMENT

Rule. Mr. Bambhania, learned Additional Government Pleader waives service of Rule. In the facts and on the circumstances of the case, the matter has been taken up for final hearing to day.

This petition has been filed against the withdrawal of the higher grade scale granted to them with effect from 1.6.1987 as per Government Resolution dated July 5, 1991, which is Annexure.B to the petition, on the ground of non-passing of the prescribed Departmental Examination. By the impugned action, an advantage which was conferred in favour of the petitioners, is sought to be taken away. The learned counsel for the petitioners raised various contentions. It was inter alia submitted that the petitioners had completed 45 years of age as on 5.7.1991 and, as provided by Government Resolution dated December 20, 1991, which is Annexure.C to the petition, were entitled to be treated as exempt from passing the Departmental Examination for the purpose of higher grade scale.

The learned AGP, on the other hand, submitted that it was not unqualified and permanent benefit which was conferred in favour of the petitioners. According to him, the petitioners were not entitled to the benefit of Government Resolution dated December 20, 1991 as the Departmental Examination contemplated under the said Resolution was the one required to be cleared before the grant of promotion and not after the grant of promotion as in the present case. In my opinion, it would not be necessary to deal all the contentions in this petition in view of the fact that it is asserted by the petitioners that the impugned action was taken without issuing any notice, without affording any opportunity of being heard to the petitioners and if the action is taken, it violates principles of natural justice and fair play. On this ground alone, the petition is required to be allowed and accordingly allowed. It is, however, made it clear that I am not expressing any opinion on merits and it is open for the respondent authorities too take action in accordance with law after affording an opportunity of being heard in the petitioners. The authorities will treat this petition as representation if the copies were submitted to the respondent. It is open to the petitioners to take all the contentions at the time of hearing. The authorities are directed to dispose of the representation, if any, as expeditiously as possible, preferably within three months from the date of the receipt of the writ. Rule is made absolute accordingly. No order as to costs. Liberty to apply.

Dt.23/2/1996.. (C.K.THAKKER J)

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ORDER BELOW SPEAKING TO MINUTES:

A number of such petitions in which common questions was raised were heard together and disposed off. In that view of the matter, there appears to be some mistake in the judgment. Learned counsel for the petitioner has shown the above facts to the court and even supplied copy of judgment with corrected facts. The Stenographer is ordered to incorporate the said facts in the judgment and get the same retyped and the office is directed to supply the certified copy from the said corrected judgment only.

Dt. 10.5.1996. (C.K.THAKKER J.)